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R. *v.* R.R., [2003] 1 S.C.R. 37, 2003 SCC 4

R.R. *Appellant*

v.

Her Majesty The Queen *Respondent*

Indexed as: R. *v.* R.R.

Neutral citation: 2003 SCC 4.

File No.: 28933.

2003: February 11.

Present: McLachlin C.J. and Gonthier, Iacobucci, Major, Bastarache, Binnie and Arbour JJ.

on appeal from the court of appeal for ontario

Criminal law — Evidence — Hearsay — Exceptions to rule — Necessity — Accused convicted of sexual assault — Complainant unavailable to testify at time of trial — Trial judge admitting in evidence complainant's statements to her mother and videotaped statement to police — No reason to interfere with trial judge's discretionary decision that hearsay statements met necessity requirement.

APPEAL from a judgment of the Ontario Court of Appeal (2001), 151 O.A.C. 1, 159 C.C.C. (3d) 11 (*sub nom. R. v. R. (R.)*), [2001] O.J. No. 4254 (QL), dismissing the accused's appeal from his conviction of sexual assault. Appeal dismissed.

William R. Gilmour, for the appellant.

Karen Shai, for the respondent.

The judgment of the Court was delivered orally by

1 IACOBUCCI J. — This is an appeal as of right that comes to the Court as a result of the dissenting judgment of Feldman J.A. in the Ontario Court of Appeal on the issue of necessity regarding the admissibility of hearsay evidence of the complainant in a sexual assault case. Feldman J.A. reasoned that the trial judge erred in law because, although the complainant was unavailable to attend on the trial date, she may have been available in a few weeks and so an adjournment was in order to safeguard the rights of the accused.

2 Neither party requested an adjournment. Viewed narrowly, the trial judge was required to determine, on the issue of necessity, whether the complainant was available to testify on the date all parties agreed to proceed. The evidence was clear and uncontradicted that for medical reasons she could not testify on that date.

3 Viewed more broadly, although we share the concerns identified by Feldman J.A. on the matter, particularly in cases of this kind, we are of the view that when one considers all the circumstances and evidence before the trial judge, there is no reason to interfere with his discretionary decision to find necessity and admit the statements.

4 In particular, there was evidence before the trial judge on which he could conclude that there was no reasonable possibility that the complainant would be available to testify within an acceptable period of time. Accordingly, the appeal is dismissed.

Judgment accordingly.

Solicitors for the appellant: Prouse, Dash & Crouch, Brampton.

Solicitor for the respondent: Ministry of the Attorney General, Toronto.